

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Elizabeth E. Brown

In re:)	
)	
RAUL JAMES HERRERA,)	Bankruptcy Case No. 09-36796 EEB
MINDY LEE HERRERA,)	Chapter 13
)	
Debtors.)	

**ORDER TO SHOW CAUSE WHY JPMORGAN CHASE BANK SHOULD NOT BE
SANCTIONED**

THIS MATTER comes before the Court *sua sponte*, having reviewed the recent Motion for Relief from Stay, filed in the name of Washington Mutual Bank, F.A. (“WAMU”), the Debtors’ Response, and the parties’ Stipulation to Resolve Motion for Relief from Stay.

Although the Motion for Relief from Stay was filed in the name of WAMU, that institution is no longer doing business under that name. According to the FDIC Bank Find website, the active successor institution to WAMU is JPMorgan Chase Bank, N.A. For purposes of this Order, the Court will refer to the holder of the Debtors’ promissory note and deed of trust as the “Lender.” In these filings, the Lender has asserted that it was entitled to stay relief due to, among other claims, the Debtors’ failure to make timely payments. In their Response, the Debtors state that they have been trying in earnest to make the payments, and have wired and mailed payments, but the Lender has rejected these payments and returned them in violation of their confirmed plan of reorganization. The Debtors then stopped making additional payments “without a reliable address out of fear that the funds will be lost or misapplied.” They further alleged that, when they have attempted to telephone the Lender to find out how to submit their payments, “Movant refused to speak with Debtors because they were represented by counsel, in spite of a specific clause in Debtors’ Chapter 13 Plan allowing such communication.” Nor have they provided the requested information in writing, despite the safe harbor for such communications provided in Local Bankruptcy Rule 4001-4. Instead the Lender employed counsel to file a motion for stay relief. Although the parties have stipulated to resolve the motion, and the Court has approved the Stipulation, the Court has concerns that the Lender may have violated Bankruptcy Rule 9011(b)(1) by filing papers asserting the Debtors’ failure to pay, when in fact the Debtors are attempting to make payments that the Lender refuses to accept. If such actions are occurring, then these violations not only impact the Court’s calendar, but more importantly they may be needlessly increasing the cost of litigation, *i.e.* by adding unnecessary legal fees and costs to the balance of the Debtors’ loan. The Court is further concerned that this problem may not be an isolated instance. Accordingly, it is hereby

ORDERED that, **within twenty days from the date of this Order**, the Lender shall file a response to this Order, addressing and/or attaching the following:

1. A payment history on the Debtors' loan that is intelligible to the Court.
2. Evidence of communication by the Lender with the Debtors to let them know where to send their monthly payments since the filing of the bankruptcy petition.
3. Any notes made by the Lender's employees and/or correspondence received from the Debtors requesting information on this loan.
4. A statement as to whether the Lender has or intends to add to the Debtors' loan balance the amount of legal fees and costs associated with its Motion for Relief from Stay.
5. A statement as to whether the Lender has or intends to add to the Debtors' loan balance late fees, default interest, costs associated with preparation for a foreclosure (inspection, appraisal, title costs, and the like), and/or any other costs attributable to the alleged default. If any such charges have been or will be applied to Debtors' loan balance, the Lender shall provide details as to what charges, what triggered the added charge, and when the added charge was or will be imposed.
6. An explanation as to why this Court should not hold the Lender in violation of Bankruptcy Rule 9011(b) and/or why monetary sanctions should not be imposed against the Lender.
7. A recent balance sheet of the Lender. In the event that the Court finds that the Lender has violated Rule 9011, then the Court must determine what monetary sanction would be sufficient to deter future misconduct.

FURTHER ORDERED that, within twenty days from the date of this order, Debtors' counsel shall submit an Affidavit of her attorney fees associated with defending against the stay relief motion and in attempting to communicate with the Lender regarding non-acceptance of payments.

FURTHER ORDERED that any person with information regarding similar practices of the Lender or of comparable conduct by others similarly situated may submit such information within twenty days from the date of the Lender's response. Before ruling on the submissions of the Lender and any others, the Court will set this matter for hearing. If it is necessary to receive evidence to resolve the matter, the scheduled hearing will be used as a scheduling conference and the matter will be reset to a later date.

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FURTHER ORDERED that any legal or other costs incurred by the Lender in preparing and filing a response to this Order shall not be added to the Debtors' loan balance.

DATED this 16th day of April, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Elizabeth E. Brown", written over a horizontal line.

Elizabeth E. Brown
United States Bankruptcy Judge